

Message Text

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SUBJECT:PREPARATIONS FOR BELGRADE -- NATURE OF THE
FINAL DOCUMENT
CONFIDENTIAL

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1. THIS TELEGRAM IS THE LATEST IN A SERIES OF U.S. EFFORTS
TO FOCUS ALLIED ATTENTION ON ISSUES RELATED TO THE BELGRADE
CSCE MEETING. DECISIONS AS TO THE NATURE OF THE FINAL
DOCUMENT CANNOT OF COURSE BE MADE UNTIL MORE IS KNOWN
ABOUT WHAT IS LIKELY TO BE ACCOMPLISHED AT BELGRADE
AND THE EXTENT TO WHICH NEW PROPOSALS SUCH AS THOSE
DESCRIBED REFTEL ARE ACCEPTED. NEVERTHELESS, THE
FORM OF THE FINAL DOCUMENT IS SOMETHING WHICH NEEDS TO

BE KEPT IN MIND, AND THIS CONTRIBUTION IS INTENDED AS A FURTHER STIMULUS TO ALLIED THINKING ON THIS SUBJECT. AS WITH OTHER SUCH DOCUMENTS, WE WILL BE INTERESTED IN ALLIED REACTION AND WISH TO TAKE ALLIED VIEWS INTO ACCOUNT AS WE FORMULATE OUR POSITIONS. THE FOLLOWING PAPER SHOULD BE CIRCULATED TO POLADS ON THAT BASIS.

2. BEGIN TEXT.

-- BELGRADE -- NATURE OF THE FINAL DOCUMENT --

(1) WHILE IT IS TOO EARLY TO DETERMINE WHAT WILL BE ACCOMPLISHED AT THE MAIN BELGRADE MEETING, WE BELIEVE SOME THOUGHT SHOULD BE GIVEN FROM THE BEGINNING TO THE FORM AS WELL AS THE SUBSTANCE OF THE DOCUMENT/DOCUMENTS WHICH WILL ULTIMATELY EMERGE FROM THAT SESSION. TO A CERTAIN EXTENT OF COURSE THIS WILL DEPEND ON THE INTENDED CONTENT OF THE DOCUMENTS; THAT IS, WHETHER THEY WILL CONSIST SOLELY OF A FACTUAL REPORT ON THE PROCEEDINGS OR WHETHER IN ADDITION THEY WILL INCLUDE AN APPRAISAL OF IMPLEMENTATION OR AGREEMENT ON SPECIFIC NEW PROPOSALS RELATING TO CERTAIN ELEMENTS OF THE HELSINKI FINAL ACT. IF THE FINAL DOCUMENT SIMPLY REPORTS RATHER THAN EXPANDS ON THE FINAL ACT, THE ISSUE OF FORM (ALTHOUGH NOT NECESSARILY THE NEGOTIATION OF LANGUAGE) IS A RELATIONSHIP OF A CONFIDENTIAL

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TIVELY SIMPLE ONE. IF, HOWEVER, THE MEETING ACHIEVES CONSENSUS ON NEW PROPOSALS, THE FORMAT OF THE DOCUMENT/DOCUMENTS WILL HAVE A SIGNIFICANT BEARING ON THE NATURE AND EXTENT OF THE COMMITMENTS REPRESENTED.

(2) IT WILL BE RECALLED THAT THE LEGAL STATUS OF THE HELSINKI FINAL ACT WAS A MATTER OF EXTENSIVE DISCUSSIONS BOTH AMONG THE ALLIES AND WITH OTHER PARTICIPANTS IN THE CONFERENCE. THE FORM OF THE DOCUMENT AS A "FINAL ACT" WAS CHOSEN IN PART BECAUSE AS A GENERAL RULE IN INTERNATIONAL PRACTICE A CONFERENCE FINAL ACT IS NOT A LEGALLY BINDING INSTRUMENT. LANGUAGE WAS INCORPORATED AT THE CONCLUSION OF THE FINAL ACT TO HIGHLIGHT THE "HIGH POLITICAL SIGNIFICANCE" OF THE CONFERENCE, LANGUAGE WHICH WAS VIEWED GENERALLY AS A DELIBERATE DISCLAIMER OF THE LEGAL NATURE OF THE DOCUMENT. THE FINAL ACT ALSO INDICATES THAT IT IS NOT AN INTERNATIONAL AGREEMENT SUBJECT TO REGISTRATION UNDER ARTICLE 102 OF THE U.N. CHARTER, AND THIS IS CONFIRMED BY THE LETTER UNDER WHICH THE FINAL ACT WAS TRANSMITTED TO THE UNITED NATIONS. IN ADDITION, IN LARGE PART BECAUSE OF ALLIED INITIATIVE, SUBSTANTIAL EFFORTS WERE MADE TO ENSURE THAT ALL CONFERENCE DOCUMENTS INCLUDED LANGUAGE OF INTENTION OR DECLARATION AND AVOIDED LANGUAGE OF LEGAL COMMITMENT. FINALLY, MANY DELEGATIONS MADE PUBLIC

STATEMENTS CHARACTERIZING THE DOCUMENT AS ONE OF NON-LEGAL OBLIGATIONS. THIS APPROACH HAS BEEN FOLLOWED CONSISTENTLY SINCE SEPTEMBER 1975.

(3) ONE SOLUTION TO THE QUESTION OF TREATMENT OF THE BELGRADE DOCUMENT/DOCUMENTS WOULD BE TO FOLLOW ESSENTIALLY THE SAME APPROACH: DRAFT A BELGRADE FINAL DOCUMENT FOR SIGNATURE BY HEADS OF DELEGATIONS. SUCH A DOCUMENT WOULD CONTAIN SUITABLE LANGUAGE INDICATING THAT IT IS NOT LEGALLY BINDING, COUPLED WITH THE JUDICIOUS USE OF LANGUAGE OF INTENT OR DECLARATION RATHER THAN LANGUAGE CONFIDENTIAL

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OF LEGAL COMMITMENT. (THIS TYPE OF LANGUAGE HAS BEEN USED IN THE DRAFT PROPOSALS ON FAMILY REUNIFICATION, ELIMINATION OF CURRENCY CONVERSION REQUIREMENTS, TV BROADCAST EXCHANGES AND BOOK/RECORD SHOPS.) AS IN THE CASE OF THE HELSINKI FINAL ACT, IT WOULD AVOID ANY PROBLEMS WITH FORMAL RATIFICATION BY MEMBER STATES, A PROCESS WHICH COULD BE POLITICALLY AS WELL AS LEGALLY DIFFICULT. IT WOULD BE DIFFICULT TO OBTAIN CONSENSUS AMONG THE PARTICIPATING STATES TO ELEVATE THE STATUS OF THE BELGRADE FINAL DOCUMENT TO THAT WHICH WAS PRODUCED AT THE HELSINKI SUMMIT, HOWEVER, ESPECIALLY SINCE THE BELGRADE MEETING CANNOT PRODUCE ANYTHING APPROACHING THE HELSINKI FINAL ACT IN ITS SCOPE AND AMBITION. IT THEREFORE SEEMS MOST LIKELY THAT THE FINAL BELGRADE DOCUMENT WILL AT THE LEAST BE BOTH A) NOT BINDING LEGALLY AND B) OF A LOWER POLITICAL-OPTICAL LEVEL THAN THE HELSINKI FINAL ACT. ONE ALTERNATIVE WHICH PROCEEDS FROM THIS CONCLUSION WOULD BE A SIGNED DOCUMENT OTHERWISE SIMILAR IN FORMAT TO THE FINAL ACT, BUT WITH A DIFFERENT NAME, E.G., "FINAL DOCUMENT," "DECLARATION OF BELGRADE," ETC. OTHER VARIATIONS ARE LISTED BELOW.

(4) IT WOULD ALSO BE POSSIBLE TO PUT THE FINAL DOCUMENT IN THE FORM OF A COMMUNIQUE OR SERIES OF RESOLUTIONS (OR A COMMUNIQUE WITH RESOLUTIONS APPENDED) WHICH WOULD BE SUPPORTED UNANIMOUSLY BY THE STATES PRESENT. IF ADOPTED WITHOUT FORMAL SIGNATURE, IT WOULD RESULT IN A DOCUMENT OR SERIES OF DOCUMENTS OF SOMEWHAT LESSER (AND LESS FORMAL) STATUS THAN THE FINAL ACT. IF SIGNED (AN UNUSUAL BUT NOT UNPRECEDENTED PRACTICE FOR COMMUNIQUE), THE LEGAL STATUS WOULD RESEMBLE THAT OF A FINAL ACT. A TRADITIONAL, UNSIGNED COMMUNIQUE WOULD, FOR EXAMPLE, SEEM TO BE AN APPROPRIATE FORMAT IF THE CONTENT IS LIMITED TO AN AGREED REPORT ON THE DISCUSSIONS THAT TOOK PLACE IN BELGRADE. ALTERNATIVELY, A PROCEDURE MIGHT BE WORKED OUT FOR PRODUCING A SERIES OF "RESOLUTIONS" CONFIDENTIAL

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OF THE BELGRADE MEETING, DOCUMENTS WHICH WOULD FOLLOW THE GENERAL FORM USED IN THE U.N. GENERAL ASSEMBLY RESOLUTIONS. THE RESOLUTION FORM WOULD REQUIRE GREAT CARE IN THE USE OF LANGUAGE TO AVOID THE IMPLICATION OF THE ACCEPTANCE OF LEGAL COMMITMENTS OR THE CHARACTERIZATION

OF THE SUBJECT MATTER AS CUSTOMARY INTERNATIONAL LAW, EVEN WITH THE ABSENCE OF A FORMAL SIGNING OR EXECUTION PROCESS. ANOTHER DISADVANTAGE OF THE RESOLUTIONS IS THE IMPLICATION THAT THEY EMANATE FROM AN INTERNATIONAL ORGANIZATION. WE HAVE IN THE PAST WISHED TO AVOID THE CREATION OF A PERMANENT, INSTITUTIONALIZED ENTITY TO MONITOR THE FINAL ACT, A POSITION WHICH MAY NOT APPEAR FULLY CONSISTENT WITH THE RESOLUTION APPROACH. HOWEVER, THIS PROBLEM IS MANAGEABLE IF APPROPRIATE LANGUAGE IS USED, E.G., "THE SIGNATORIES OF THE HELSINKI FINAL ACT... RESOLVE...". A SERIES OF RESOLUTIONS MIGHT ALSO BE ANNEXED TO A COMMUNIQUE.

(5) WE ASSUME THAT NONE OF THE NEW PROPOSALS ON WHICH AGREEMENT MIGHT BE REACHED AT BELGRADE WOULD DEPART SO RADICALLY FROM THE HELSINKI FINAL ACT THAT THEY WOULD REQUIRE CONCLUSION OF A SEPARATE LEGALLY BINDING, MULTILATERAL AGREEMENT. THEY COULD THUS BE INCORPORATED INTO THE BODY OF THE MEETING'S FINAL DOCUMENT. THIS MIGHT BE DONE EITHER IN THE DESCRIPTION OF PROCEEDINGS (I.E., "IN THE COURSE OF REVIEWING THIS SUBJECT, THE PARTICIPATING STATES AGREED THAT IT WOULD BE DESIRABLE ...") OR IN RESOLUTIONS APPENDED TO THE MAIN DOCUMENT.

(6) THERE ARE CLEARLY OTHER POSSIBLE VARIATIONS TO A FINAL DOCUMENT IN TERMS OF NOMENCLATURE AND FORMAT. BEFORE ANY FINAL DECISION CAN BE MADE, WE WILL HAVE TO DECIDE QUESTIONS OF SUBSTANTIVE CONTENT OF NEW MATERIAL, LEVEL OF FORMALITY, AND WHETHER SIGNATURE IS DESIRED. IN THIS CONNECTION, IT OBVIOUSLY WILL BE DIFFICULT TO CONFIDENTIAL

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REACH AGREEMENT ON AN AGREED APPRAISAL OF IMPLEMENTATION. IT MAY TURN OUT TO BE EASIER TO REACH A SATISFACTORY RESULT IF THE FINAL DOCUMENT IS SOMEWHAT LESS FORMAL, PERHAPS UNSIGNED.

(7) CONSIDERATION MIGHT ALSO BE GIVEN TO THE QUESTION OF WHETHER THE NATURE OF THE FINAL DOCUMENT SHOULD BE ADDRESSED DURING THE PREPARATORY MEETING WHICH BEGINS IN BELGRADE JUNE 15. THE FINAL ACT PROVIDES THAT THE RULES OF PROCEDURE AND THE WORKING METHODS USED AT BELGRADE SHALL BE, MUTATIS MUTANDIS, THOSE WHICH WERE USED AT THE CSCE CONFERENCE ITSELF (ESSENTIALLY THE BLUE BOOK). THE BLUE BOOK WAS AMBIGUOUS ON THE NATURE

OF THE FINAL DOCUMENT TO BE PRODUCED BY THE CSCE CONFERENCE, PROVIDING ONLY THAT "THE CONFERENCE WILL ADOPT ITS FINAL DOCUMENTS, IN FORMAL SESSION, AT THE CLOSE OF THIS THIRD STAGE." THIS AMBIGUITY WAS A RESULT OF AN INABILITY OF THE PARTICIPATING STATES TO

AGREE ON THE NATURE OF AN APPROPRIATE FINAL DOCUMENT, AND AN APPROPRIATE SIGNATURE LEVEL, BEFORE THE NEGOTIATING PHASE BEGAN. A SIMILAR SITUATION MAY PREVAIL AT BELGRADE. OUR PRIMARY INTEREST IN THIS RESPECT WOULD SEEM TO BE TO ENSURE THAT THE PROCEDURES AGREED UPON AT THE BELGRADE PREPARATORY MEETING NOT HINDER OUR ABILITY TO NEGOTIATE AN AGREED APPRAISAL OF IMPLEMENTATION AND THAT WE RETAIN THE OPTION TO MAKE NATIONAL APPRAISAL STATEMENTS AND APPEND THEM TO THE FINAL DOCUMENT IF AN AGREED APPRAISAL OF IMPLEMENTATION IS NOT ATTAINABLE.

(8) THIS LEADS TO CONSIDERATION OF THE QUESTION OF HOW THE RESULTS OF THE PREPARATORY MEETING WILL BE REFLECTED. WE WISH TO ENSURE THAT THE TASKS OF THAT MEETING-- ESTABLISHING A DATE, AGENDA AND PROCEDURES FOR THE MAIN MEETING -- ARE FULFILLED IN A MANNER WHICH GIVES US THE OPTIMUM OPPORTUNITY TO ACCOMPLISH OUR SUBSTANTIVE CONFIDENTIAL

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OBJECTIVES AT THE MAIN MEETING. IT WILL THUS BE NECESSARY TO REACH CLEAR WRITTEN AGREEMENT ON VARIOUS TOPICS SUCH AS AGENDA AND COMMITTEE PROCEDURE AND TO RECORD THIS AGREEMENT IN SOME SORT OF DOCUMENT. THIS DOCUMENT MIGHT EITHER BE APPROVED AT THE PREPARATORY SESSION OR FOLLOW BLUE BOOK PRECEDENT BY FORWARDING RECOMMENDATIONS TO THE MAIN MEETING. THESE RECOMMENDATIONS COULD THEN BE ADOPTED BY THE OPENING PLENARY OF THE MAIN MEETING AS THE BLUE BOOK WAS ADOPTED AT THE OPENING OF THE CSCE CONFERENCE. OUR PREFERENCE WOULD BE FOR THE FORMER PROCEDURE. THE FINAL ACT STATES CLEARLY THAT THE PREPARATORY MEETING CAN "DECIDE" DATE, AGENDA AND PROCEDURES, AND WE WISH TO FOLLOW FINAL ACT LANGUAGE AS CLOSELY AS POSSIBLE IN THE BELGRADE MEETING. MOREOVER, THERE IS A PRECEDENT IN THE NEGOTIATION OF WORKING PROCEDURES FOR THE HELSINKI SUMMIT AT THE END OF THE GENEVA PHASE OF CSCE WHICH WERE NOT FORMALLY ADOPTED BY THE SUMMIT PARTICIPANTS IN HELSINKI.

(9) WE WOULD WELCOME ALLIED VIEWS ON THESE ISSUES.

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